

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

<p>SILVERTOP ASSOCIATES, INC., D/B/A RASTA IMPOSTA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>KANGAROO MANUFACTURING, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No. 1:17-cv-07919-NLH-KMW</p>
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**DECLARATION OF ROBERT BERMAN**

I, Robert Berman, of full age, declare:

1. I am the Chief Executive Officer of Silvertop Associates, Inc., d/b/a Rasta Imposta (“Rasta Imposta”), the plaintiff in the above captioned matter. I submit this certification in support of Rasta Imposta’s motion for a preliminary injunction. This certification is based upon my personal knowledge.

2. Rasta Imposta is a family-owned business that designs, manufactures, and sells innovative and distinctive costumes for adults and children. Rasta Imposta began more than twenty years ago when I created the Original Rasta Hat with sewn-in dreadlocks. This led to the creation of new designs and the company’s expansion into the “Halloween Industry.”

3. In 1998, Rasta Imposta introduced a collection of costumes to complement its existing line of hats. Rasta Imposta now manufactures thousands of costumes and accessories for kids and adults of all ages. In fact, the majority of Rasta Imposta’s sales are directly tied to the retail cycle associated with the Halloween season. Crucial to Rasta Imposta’s brand is that consumers recognize Rasta Imposta as a creator and manufacturer of unique costume designs

that are made with high quality materials. Rasta Imposta strives to consistently create new and innovative looks that set it apart from other costume designers and manufacturers.

4. Rasta Imposta began offering the Banana Design, one of our seminal products, to the public on or about March 9, 2001. Examples of the Banana Design are shown below:



5. When it debuted in 2001, the Banana Design was the only costume design with this distinctive overall appearance. Since then, Rasta Imposta has spent significant time combating knock-off designs and protecting its intellectual property in the Banana Design. Rasta Imposta has entered into agreements to license the Banana Design under certain terms and conditions.

6. The appearance and trade dress of Rasta Imposta's distinctive Banana Design is identified by a combination of arbitrary and distinct visual elements which make up its overall appearance, design, and trade dress, including but not limited to the positioning of the cutout holes in the Banana Design, the Banana Design's black tips at the ends, the placement of the banana ends, and the vertical lines running down the middle.

7. Due to Rasta Imposta's manufacture and advertisement of the Banana Design between 2001 and the present, the Banana Design has become recognizable as a unique banana costume design throughout the United States.

8. Rasta Imposta became known for the Banana Design. Following its success, one costume retailer was inquiring into whether Rasta Imposta would come up with a new and innovative costume, and asked me - “What is your next ‘banana’?”

9. Rasta Imposta filed a copyright application to register the Banana Design on or about March 23, 2010. The copyright application and registration is attached hereto as **Exhibit A**.

10. Rasta Imposta owns Copyright Registration No. VA 1-707-439, which was issued March 26, 2010, for the Banana Design.

11. My understanding is that the founder of defendant Kangaroo Manufacturing, Inc. (“Kangaroo”), Justin Ligeri (“Ligeri”), previously owned another company called Yagoozon, Inc. (“Yagoozon”).

12. Ligeri and Yagoozon entered into a business relationship with Rasta Imposta in 2012 in order to sell Rasta Imposta’s costumes, including its Banana Design.

13. During our discussions, Ligeri was informed of Rasta Imposta’s copyright registration for the Banana Design, and Yagoozon purchased thousands of Rasta Imposta’s banana costumes.

14. Rasta Imposta’s attempted business relationship with Ligeri and Yagoozon did not end on good terms.

15. When Rasta Imposta terminated the business relationship in 2013, Ligeri sent me emails that stated, among other things: “The officially licensed Banana – I don’t think so,” and “I’ll spend a million dollars just to ruin your life.” Ligeri’s August 7, 2013 email to me is attached hereto as **Exhibit B**, at 1.

16. Ligeri sent me other emails during this time that contained offensive, anti-Semitic language, and threats to my family and company. *See Exhibit B.*

17. On or about September 25, 2017, I discovered that Ligeri's company Kangaroo had copied the Banana Design and was offering Kangaroo Item Nos. 10477 and 10478. I discovered the infringement when I was forwarded Kangaroo Costume's 2017 Halloween catalogue by a third party.

18. Third parties have licensed the Banana Design from Rasta Imposta, but Kangaroo does not have any license to use the Banana Design.

19. On or about October 19, 2017, Rasta Imposta received an email from a concerned consumer who said that counterfeiting was occurring on Amazon.com.

20. The consumer stated that third-party sellers were listing the Rasta Imposta banana costume for sale, but consumers who purchased these costumes were actually being sent the Kangaroo banana costumes instead.

21. Specifically, the consumer stated that third-party seller AlgaeCal was engaging in this practice.

22. On or about November 9, 2017, Rasta Imposta received a voicemail from a concerned consumer who expressed the same concerns regarding counterfeiting and third-party seller AlgaeCal on Amazon.com.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on November 30, 2017

  
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Robert Berman